

### § 35.1603

### 40 CFR Ch. I (7–1–07 Edition)

States in carrying out approved methods and procedures for restoration (including protection against degradation) of publicly owned freshwater lakes.

[45 FR 7792, Feb. 5, 1980, as amended at 54 FR 14359, Apr. 11, 1989]

#### **§ 35.1603 Summary of clean lakes assistance program.**

(a) Under section 314 of the Clean Water Act, EPA may provide financial assistance to States to implement methods and procedures to protect and restore publicly owned freshwater lakes. Although cooperative agreements may be awarded only to States, these regulations allow States, through substate agreements, to delegate some or all of the required work to substate agencies.

(b) Only projects that deal with publicly owned freshwater lakes are eligible for assistance. The State must have assigned a priority to restore the lake, and the State must certify that the lake project is consistent with the State Water Quality Management Plan (§ 35.1521) developed under the State/EPA Agreement. The State/EPA Agreement is a mechanism for EPA Regional Administrators and States to coordinate a variety of programs under the Clean Water Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act and other laws administered by EPA.

(c) These regulations provide for Phase 1 and 2 cooperative agreements. The purpose of a Phase 1 cooperative agreement is to allow a State to conduct a diagnostic-feasibility study to determine a lake's quality, evaluate possible solutions to existing pollution problems, and recommend a feasible program to restore or preserve the quality of the lake. A Phase 2 cooperative agreement is to be used for implementing recommended methods and procedures for controlling pollution entering the lake and restoring the lake. EPA award of Phase 1 assistance does not obligate EPA to award Phase 2 assistance for that project. Additionally, a Phase 1 award is not a prerequisite for receiving a Phase 2 award. However, a Phase 2 application for a proposed project that was not evaluated under a

Phase 1 project shall contain the information required by appendix A.

(d) EPA will evaluate all applications in accordance with the application review criteria of § 35.1640–1. The review criteria include technical feasibility, public benefit, reasonableness of proposed costs, environmental impact, and the State's priority ranking of the lake project.

(e) Before awarding funding assistance, the Regional Administrator shall determine that pollution control measures in the lake watershed authorized by section 201, included in an approved 208 plan, or required by section 402 of the Act are completed or are being implemented according to a schedule that is included in an approved plan or discharge permit. Clean lakes funds may not be used to control the discharge of pollutants from a point source where the cause of pollution can be alleviated through a municipal or industrial permit under section 402 of the Act or through the planning and construction of wastewater treatment facilities under section 201 of the Act.

#### **§ 35.1605 Definitions.**

The terms used in this subpart have the meanings defined in sections 502 and 518(h) of the Act. In addition, the following terms shall have the meaning set forth below.

[45 FR 7792, Feb. 5, 1980, as amended at 54 FR 14359, Apr. 11, 1989]

##### **§ 35.1605–1 The Act.**

The Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

##### **§ 35.1605–2 Freshwater lake.**

Any inland pond, reservoir, impoundment, or other similar body of water that has recreational value, that exhibits no oceanic and tidal influences, and that has a total dissolved solids concentration of less than 1 percent.

##### **§ 35.1605–3 Publicly owned freshwater lake.**

A freshwater lake that offers public access to the lake through publicly owned contiguous land so that any person has the same opportunity to enjoy nonconsumptive privileges and benefits of the lake as any other person. If user

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fees are charged for public use and access through State or substate operated facilities, the fees must be used for maintaining the public access and recreational facilities of this lake or other publicly owned freshwater lakes in the State, or for improving the quality of these lakes.

### §35.1605-4 Nonpoint source.

Pollution sources which generally are not controlled by establishing effluent limitations under sections 301, 302, and 402 of the Act. Nonpoint source pollutants are not traceable to a discrete identifiable origin, but generally result from land runoff, precipitation, drainage, or seepage.

### §35.1605-5 Eutrophic lake.

A lake that exhibits any of the following characteristics:

- (a) Excessive biomass accumulations of primary producers;
- (b) Rapid organic and/or inorganic sedimentation and shallowing; or
- (c) Seasonal and/or diurnal dissolved oxygen deficiencies that may cause obnoxious odors, fish kills, or a shift in the composition of aquatic fauna to less desirable forms.

### §35.1605-6 Trophic condition.

A relative description of a lake's biological productivity based on the availability of plant nutrients. The range of trophic conditions is characterized by the terms of oligotrophic for the least biologically productive, to eutrophic for the most biologically productive.

### §35.1605-7 Desalinization.

Any mechanical procedure or process where some or all of the salt is removed from lake water and the freshwater portion is returned to the lake.

### §35.1605-8 Diagnostic-feasibility study.

A two-part study to determine a lake's current condition and to develop possible methods for lake restoration and protection.

- (a) The diagnostic portion of the study includes gathering information and data to determine the limnological, morphological, demographic, socio-economic, and other pertinent characteristics of the lake and

its watershed. This information will provide recipients an understanding of the quality of the lake, specifying the location and loading characteristics of significant sources polluting the lake.

- (b) The feasibility portion of the study includes:

- (1) Analyzing the diagnostic information to define methods and procedures for controlling the sources of pollution;
- (2) Determining the most energy and cost efficient procedures to improve the quality of the lake for maximum public benefit;
- (3) Developing a technical plan and milestone schedule for implementing pollution control measures and in-lake restoration procedures; and
- (4) If necessary, conducting pilot scale evaluations.

### §35.1605-9 Indian Tribe set forth at 40 CFR 130.6(d).

A Tribe meeting the requirements set forth at 40 CFR 130.6(d).

[54 FR 14359, Apr. 11, 1989, as amended at 56 FR 13817, Mar. 23, 1994]

### §35.1610 Eligibility.

EPA shall award cooperative agreements for restoring publicly owned freshwater lakes only to the State agency designated by the State's Chief Executive. The award will be for projects which meet the requirements of this subchapter.

### §35.1613 Distribution of funds.

- (a) For each fiscal year EPA will notify each Regional Administrator of the amount of funds targeted for each Region through annual clean lakes program guidance. To assure an equitable distribution of funds the targeted amounts will be based on the clean lakes program which States identify in their State WQM work programs.

- (b) EPA may set aside up to twenty percent of the annual appropriations for Phase 1 projects.

### §35.1615 Substate agreements.

States may make financial assistance available to substate agencies by means of a written interagency agreement transferring project funds from the State to those agencies. The agreement shall be developed, administered and approved in accordance with the